

SENATE BILL REPORT

SB 5276

As Reported By Senate Committee On:
Consumer Protection & Housing, February 13, 2007

Title: An act relating to automatic dialing and announcing devices.

Brief Description: Limiting the use of automatic dialing and announcing devices.

Sponsors: Senators Kohl-Welles, Poulsen, Rockefeller, Morton, Shin, Pridemore, Holmquist and Rasmussen.

Brief History:

Committee Activity: Consumer Protection & Housing: 1/25/07, 2/13/07 [DPS, w/oRec].

SENATE COMMITTEE ON CONSUMER PROTECTION & HOUSING

Majority Report: That Substitute Senate Bill No. 5276 be substituted therefor, and the substitute bill do pass.

Signed by Senators Weinstein, Chair; Kauffman, Vice Chair; Haugen, Jacobsen, Kilmer, McCaslin and Tom.

Minority Report: That it be referred without recommendation.

Signed by Senators Honeyford, Ranking Minority Member and Delvin.

Staff: Alison Mendiola (786-7483)

Background: People are often the recipients of automatic dialing and announcing devices (ADAD). ADADs are computerized machines that automatically dial telephone numbers and play a prerecorded message. Many people find ADADs to be an annoyance, including ADADs used for political campaigns. The following is a list of current regulations effecting the use of ADADs.

Commercial Solicitations Prohibited by State Law: Unsolicited ADAD calls to encourage the buying of property, goods, or services are prohibited. The penalty is \$500 per violation. It is also a violation of the Consumer Protection Act, which provides for fines, treble damages, court costs, and attorneys' fees.

Washington Utilities and Transportation Commission (WUTC): The WUTC regulates non-commercial ADAD messages sent by utilities. The WUTC allows such calls only between 8 a.m. and 9 p.m., and only if the recorded message states who is calling, the telephone number of the caller, and the nature of the call. Emergency messages delivered by government agencies are exempted. Administrative penalties include fines not to exceed \$1,000.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Federal Law and Prerecorded Messages: Among other things, federal law prohibits calls using prerecorded voice messages to residential telephone numbers except in the following cases: (1) emergency calls; (2) calls made with prior consent; (3) non-commercial calls; (4) calls by, or on behalf of, tax-exempt non-profit organizations; or (5) calls to whom the caller has an established business relationship. Consumers may enforce the prohibition by contacting their state's Attorney General or by personally suing in state court for the greater of actual damages or \$500.

Summary of Bill (Recommended Substitute): ADAD messages may not be used before 9:00 a.m. or after 9:00 p.m. ADAD's are allowed between 9:00 a.m. and 9:00 p.m. if there is prior consent or a live operator asks for consent before playing the message. An exception is allowed for emergency messages from government agencies, schools notifying students and employees, and businesses contacting employers. There is also an exception if the caller has a current business or personal relationship and is calling for purposes other than commercial solicitation.

Violators may be sued for \$1,000 per violation.

EFFECT OF CHANGES MADE BY CONSUMER PROTECTION AND HOUSING COMMITTEE (Recommended Substitute): The ADAD statute remains in chapter 80.36 by amending RCW 80.36.400, instead of repealing it. The definition of "message" is changed to specify that the message is "not a commercial solicitation." ADAD's are allowed if there is prior consent or live operator asks for consent before playing the message. The current provision granting the WUTC additional rulemaking authority over ADADs is retained. The exemption for parties with whom the calling party has a current business or personal relationship is further specified by adding that the caller must be calling for purposes other than commercial solicitation.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: Consumers need a tool to stop the harassment of ADADs. This bill is based off of the Minnesota Law, which has been found constitutional. The Attorney General's office raised some concerns in the form of a letter addressed to the Legislature the evening before the 8 a.m. hearing. The prime sponsor of the bill did not receive a copy of the letter until the morning of the hearing.

OTHER: The bill has unintended consequences. The bill repeals original rules that allowed WUTC to place greater restrictions on those using ADADs. There is also a concern about the need for a severability clause for First Amendment issues that may arise.

Persons Testifying: PRO: Senator Kohl-Welles, prime sponsor. OTHER: Dave Danner, WUTC.